MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 4

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.5101 pertaining to the amendment by reference of the State of Montana Public Employee Deferred Compensation (457) Plan Document and Trust Agreement	)))))	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On April 28, 2023, the Public Employees' Retirement Board proposes to amend the above-stated rule.

2. The Public Employees' Retirement Board will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact Montana Public Employee Retirement Administration no later than 5:00 p.m. on March 17, 2023, to advise us of the nature of the accommodation that you need. Please contact Kris Vladic, Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-2578; fax (406) 444-5428; TDD (406) 444-1421; or e-mail kvladic@mt.gov.

3. The rule as proposed to be amended provides as follows, new matter underlined, deleted matter interlined:

2.43.5101 ADOPTION OF DEFERRED COMPENSATION PLAN DOCUMENT AND TRUST AGREEMENT (1) remains the same.

(a) State of Montana Public Employee Deferred Compensation Plan Document ~~(January 2018 edition)~~, that was approved by the board on ~~June 11, 2020~~ February 9, 2023, and describes the terms and conditions related to the operation and administration of the plan; and

(b) and (2) remain the same.

AUTH: 19-50-102, MCA
IMP: 19-50,102, MCA

STATEMENT OF REASONABLE NECESSITY: The Public Employees' Retirement Board, as administrator of the Public Employee Retirement System's State of Montana 457(b) Deferred Compensation Plan, is proposing to revise the 457(b) Deferred Compensation Plan Document to incorporate a recent change to federal law directly applicable to the operation of the plan.

As provided for in the Consolidated Appropriations Act signed into law on December 29, 2022, which incorporated the retirement reform provisions contained in the

SECURE 2.0 Act of 2022, the requirement that a 457(b) plan participant must enter into a salary reduction agreement to defer compensation to the plan before the beginning of the month to which the agreement will apply has been repealed. This change aligns the rules for governmental 457(b) plans with those of 401(k) and 403(b) plans, so that contributions can be made effective for any compensation made available to the participant after the salary reduction agreement is filed with the Public Employee Retirement Administration.

This change in federal law applies to the 457(b) Deferred Compensation Plan. As such, Section 2.04 of 457(b) Deferred Compensation Plan Document is amended to remove this limiting language and reflect this change.

The revised plan document was reviewed and approved by the board at its February 9, 2023 board meeting. Because the board determined to adopt the original plan document by reference, 2-4-307(3), MCA, requires that changes to the documents also be adopted by reference. Therefore, it is necessary to amend the rule that adopts the plan document to indicate the version of the plan document being adopted by reference.

The plan document is available on the board's web page at mpera.mt.gov.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: Montana Public Employee Retirement Administration, P.O. Box 200131, Helena, Montana, 59620-0131; telephone (406) 444-3154; fax (406) 444-5428; or e-mail mpera@mt.gov, and must be received no later than 5:00 p.m., March 24, 2023.

5. If persons who are directly affected by the proposed action[s] wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Kris Vladic at the above address no later than 5:00 p.m., March 24, 2023.

6. If the Public Employees' Retirement Board receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 998 persons based on 9,987 participants in the 457(b) Deferred Compensation Plan as of January 27, 2023.

7. The Public Employees' Retirement Board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices

and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the Public Employees' Retirement Board.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the Public Employees' Retirement Board has determined that the amendment of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State February 14, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.4.201, 23.4.203, 23.4.209, 23.4.210, 23.4.211, 23.4.212, 23.4.213, 23.4.214, 23.4.215, 23.4.216, 23.4.217, 23.4.218, 23.4.219, 23.4.220, 23.4.221, and 23.4.225 pertaining to drug and/or alcohol analysis	)	NOTICE OF PROPOSED AMENDMENT NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On March 27, 2023, the Department of Justice proposes to amend the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on March 7, 2023, to advise us of the nature of the accommodation that you need. Please contact Buffy Ekola, Department of Justice, 215 North Sanders, Helena, Montana 59620-1401; telephone (406) 444-5776; fax (406) 444-3549; or e-mail BEkola@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.4.201 DEFINITIONS Unless the context requires otherwise, the following definitions apply to this subchapter:

~~(1) "Accessory" means any device or item, which may or may not be expandable, but assists in the operation of the breath analysis instrument.~~

(2) and (3) remain the same, but are renumbered (1) and (2).

~~(4) "Alveolar air" means that air which is located in the alveoli of the lungs and is responsible for the exchange of gases between the blood and the lung. This is the type of breath upon which the 2100:1 breath blood ratio is established.~~

(5) through (20) remain the same, but are renumbered (3) through (18).

~~(21) "MLEA" means Montana Law Enforcement Academy.~~

~~(22) "NHTSA" means National Highway Traffic Safety Administration.~~

~~(23) "POST council" means Police Officer Standards and Training Advisory Council of the Montana Board of Crime Control.~~

(24) through (27) remain the same, but are renumbered (19) through (22).

~~(28) "SFST/HGN" means standardized field sobriety testing/horizontal gaze nystagmus.~~

(29) through (31) remain the same, but are renumbered (23) through (25).

AUTH: ~~61-8-405~~ 61-8-1019, MCA

IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: Some definitions have been eliminated as there is no reference to them within this subchapter. The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.203 EXEMPTIONS (1) remains the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.209 BREATH ANALYSIS INSTRUMENTS (1) All models of breath analysis instruments used to administer testing according to ~~61-8-402~~ 61-8-1019, MCA, must be approved by the division. The models operated by certified operators and/or senior operators prior to and on the effective date of this rule are deemed approved by the division.

AUTH: ~~61-8-405(6)~~ 61-8-1019, MCA
IMP: ~~61-8-405(6)~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing the statutory reference in the text of this rule and this rule's authority and implementation statutes.

23.4.210 SURVEYS AND PROFICIENCY TESTS (1) through (3) remain the same.

AUTH: ~~61-8-405(6)~~ 61-8-1019, MCA
IMP: ~~61-8-405(6)~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.211 BLOOD AND URINE TEST RECORDS (1) remains the same.

AUTH: ~~61-8-405(6)~~ 61-8-1019, MCA
IMP: ~~61-8-405(6)~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.212 BREATH ANALYSIS INSTRUMENTATION AND ASSOCIATED EQUIPMENT (1) through (8) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.213 FIELD CERTIFICATION OF BREATH ANALYSIS INSTRUMENTS AND ASSOCIATED EQUIPMENT (1) and (2) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.214 LABORATORY CERTIFICATION (1) through (5) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.215 QUALIFICATION OF BREATH ANALYSIS LOCATION (1) through (8) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and

new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.216 INITIAL CERTIFICATION OF BREATH-TEST SPECIALISTS (1) through (7) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.217 RENEWAL OF BREATH-TEST SPECIALIST PERMITS (1) through (7) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.218 PERMITS (1) No individual may perform a breath analysis for alcohol pursuant to ~~61-8-402~~ 61-8-1019, MCA, without a current permit. Individuals holding permits issued by the division shall perform only those functions designated by that permit.

(2) remains the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing the statutory reference in the text of this rule and this rule's authority and implementation statutes.

23.4.219 REVOCATION OF PERMITS (1) and (2) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and

new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.220 COLLECTION OF BLOOD SAMPLES FOR DRUG AND/OR ALCOHOL ANALYSIS (1) through (7) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.221 COLLECTION OF POSTMORTEM SAMPLES FOR DRUG AND/OR ALCOHOL ANALYSIS (1) through (4) remain the same.

AUTH: ~~61-8-405(6)~~ 61-8-1019, MCA
IMP: ~~61-8-405(6)~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

23.4.225 PRELIMINARY ALCOHOL SCREENING TESTS (PASTs) (1) through (6) remain the same.

AUTH: ~~61-8-405~~ 61-8-1019, MCA
IMP: ~~61-8-405~~ 61-8-1019, MCA

REASON: The laws regarding driving under the influence were amended by the 2021 Montana Legislature resulting in some existing statutes being repealed and new statutes being enacted thereby changing this rule's authority and implementation statutes.

4. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Buffy Ekola, Department of Justice, 215 North Sanders, Helena, Montana 59620-1401; telephone (406) 444-5776; fax (406) 444-3549; or e-mail BEkola@mt.gov, and must be received no later than 5:00 p.m., March 24, 2023.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Buffy Ekola at the above address no later than 5:00 p.m., March 24, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 193 persons based on 1,925 breath test specialists across the state and three manufacturers of the breath test instruments used throughout the state.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

9. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ CHRISTIAN CORRIGAN
Christian Corrigan
Solicitor General
Department of Justice

Certified to the Secretary of State February 14, 2023.

BEFORE THE PUBLIC SAFETY OFFICERS
STANDARDS AND TRAINING COUNCIL
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.13.215 and 23.13.702 pertaining to the certification of public safety officers	))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT

TO: All Concerned Persons

1. On March 22, 2023, at 10:00 a.m., the Public Safety Officers Standards and Training (POST) Council will hold a public hearing in Room 205 in the Karl Ohs Building at the Montana Law Enforcement Academy, 2260 Sierra Road East, at Helena, Montana, to consider the proposed amendment of the above-stated rules.

2. The POST Council will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the POST Council no later than 5:00 p.m. on March 8, 2023, to advise us of the nature of the accommodation that you need. Please contact Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.13.215 FIREARMS PROFICIENCY STANDARDS (1) and (1)(a) remain the same.

(b) designate a ~~POST-certified~~ firearms instructor as defined in these rules to conduct or oversee and document annual firearms proficiency. The instructor need not be a POST-certified instructor but must ~~also~~ have attended a minimum 40-hour POST-approved firearms instructor course or its equivalent, which includes the following topics:

(i) through (5) remain the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 7-32-303, 44-4-403, MCA

REASON: On August 23, 2022, the Montana POST Council's Administrative Rule Committee met, and Montana Law Enforcement Academy Administrator Glen Stinar informed the committee that the academy does not believe that an officer needs to meet the requirements of a POST-certified instructor in order to oversee firearms qualifications. The academy also noted difficulty in meeting the training needs of agencies throughout the state, due to the requirement that the designated firearms instructor be a POST-certified instructor. The POST Council proposes to amend this

rule to address these concerns while still requiring the instructor to have attended a POST-approved firearms course meeting minimum requirements.

23.13.702 GROUNDS FOR DENIAL, SANCTION, SUSPENSION, OR REVOCATION OF POST CERTIFICATION (1) through (3)(c) remain the same.

(d) unauthorized use of or being under the influence of an intoxicating substance, including alcoholic beverages or marijuana, while on duty, or the use of an intoxicating substance, including alcoholic beverages or marijuana, in a manner which tends to discredit the officer, the officer's employing authority, or the profession;

(e) through (4) remain the same.

AUTH: 2-15-2029, MCA
IMP: 2-15-2029, 44-4-403, MCA

REASON: Recreational marijuana was legalized in Montana in 2020. To address this change to state law, the POST Council proposes to amend this rule so that, like alcohol, the use of recreational marijuana or other intoxicating substances by public safety officers is sanctionable if the use leads to impairment while on duty or violates the policy of the officer's employing agency.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to: Katrina Bolger, POST Council, 2260 Sierra Road East, Helena, Montana, 59602; telephone (406) 444-9974; or e-mail kbolger@mt.gov, and must be received no later than 5:00 p.m., April 19, 2023.

5. J. Stuart Segrest, Attorney at Law, has been designated to preside over and conduct this hearing.

6. The council maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

7. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

8. With regard to the requirements of 2-4-111, MCA, the council has determined that the amendment of the above-referenced rules will not significantly and directly impact small businesses.

Sheriff Jesse Slaughter
Chairman
Public Safety Officers Standards and Training Council

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ CHRISTIAN CORRIGAN
Christian Corrigan
Solicitor General
Department of Justice

Certified to the Secretary of State February 14, 2023.

BEFORE THE PUBLIC EMPLOYEES' RETIREMENT BOARD
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 2.43.1306 pertaining to actuarial rates and assumptions	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On January 13, 2023, the Public Employees' Retirement Board published MAR Notice No. 2-43-633 pertaining to the proposed amendment of the above-stated rule at page 1 of the 2023 Montana Administrative Register, Issue Number 1.

2. The Public Employees' Retirement Board has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Nicholas Domitrovich
Nicholas Domitrovich
Chief Legal Counsel
and Rule Reviewer

/s/ Maggie Peterson
Maggie Peterson
President
Public Employees' Retirement Board

Certified to the Secretary of State February 14, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.79.304 pertaining to Healthy Montana Kids Evidence of Coverage	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 9, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-970 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2235 of the 2022 Montana Administrative Register, Issue Number 23.

2. The department has amended the following rule as proposed: ARM 37.79.304.

3. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: One commenter stated that they had a concern regarding the effective date of the document being January 1, 2023. They have been providing Applied Behavior Analysis (ABA) services prior to the effective date and would not like to see an interruption in services for those receiving ABA.

RESPONSE #1: The department agrees with the comment. Although it is not reflected in the Evidence of Coverage document, ABA services have been a covered benefit since June 1, 2018.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State February 14, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.115.106 pertaining to public swimming pools	)))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 9, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-982 pertaining to the public hearing on the proposed amendment of the above-stated rule at page 2239 of the 2022 Montana Administrative Register, Issue Number 23.

2. The department has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State February 14, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.12.201, 37.12.205, and 37.12.206 and the repeal of ARM 37.12.601, 37.12.603, and 37.12.608 pertaining to premarital blood testing	)))))	NOTICE OF AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On December 9, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-1016 pertaining to the proposed amendment and repeal of the above-stated rules at page 2256 of the 2022 Montana Administrative Register, Issue Number 23.

2. The department has amended and repealed the above-stated rules as proposed.

3. No comments or testimony were received.

/s/ ROBERT LISHMAN
Robert Lishman
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State February 14, 2023.

BEFORE THE DEPARTMENT OF PUBLIC
HEALTH AND HUMAN SERVICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 37.85.104 and 37.85.105 pertaining to updating Medicaid and non-Medicaid provider rates, fee schedules, and effective dates	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On November 18, 2022, the Department of Public Health and Human Services published MAR Notice No. 37-1018 pertaining to the public hearing on the proposed amendment of the above-stated rules at page 2202 of the 2022 Montana Administrative Register, Issue Number 22. On January 27, 2023, the department published a notice of extension of comment period on the proposed amendment at page 84 of the 2023 Montana Administrative Register, Issue Number 2.

2. The department has withdrawn the reimbursement rates for mobile crisis response services on the following fee schedules: Medicaid Adult Mental Health Medicaid fee schedule, Substance Use Disorder Medicaid fee schedule, non-Medicaid Mental Health Medicaid fee schedule, Substance Use Disorder non-Medicaid fee schedule, and Youth Mental Health fee schedule. This is the result of unexpected delays in drafting and filing a corresponding rulemaking for these services. Additionally, the department was delayed in submitting a request to the Centers for Medicare & Medicaid Services (CMS) to add mobile crisis response services to the Medicaid State Plan effective January 1, 2023. The department will take the specific recommendations on mobile crisis response, provided during this rulemaking, into consideration for future rulemaking.

3. The department has amended the following rules as proposed, but with the following changes from the original proposal, new matter underlined, deleted matter interlined:

37.85.104 EFFECTIVE DATES OF PROVIDER FEE SCHEDULES FOR MONTANA NON-MEDICAID SERVICES (1) remains as proposed.

(a) Mental health crisis services, as provided in ARM 37.88.101, is effective ~~January 1, 2023~~ October 1, 2022.

(b) and (c) remain as proposed.

(d) Substance use disorder services provider reimbursement, as provided in ARM 37.27.905, is effective ~~January 1, 2023~~ October 1, 2022.

(2) remains as proposed.

AUTH: 53-2-201, 53-6-101, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-111, MCA

37.85.105 EFFECTIVE DATES, CONVERSION FACTORS, POLICY ADJUSTERS, AND COST-TO-CHARGE RATIOS OF MONTANA MEDICAID PROVIDER FEE SCHEDULES (1) through (5) remain as proposed.

(a) The mental health center services for adults fee schedule, as provided in ARM 37.88.907, is effective ~~January 1, 2023~~ October 1, 2022.

(b) remains as proposed.

(c) The substance use disorder services fee schedule, as provided in ARM 37.27.905, is effective ~~January 1, 2023~~ October 1, 2022.

(6) For the Behavioral Health and Developmental Disabilities Division, the department adopts and incorporates by reference the Medicaid youth mental health services fee schedule, as provided in ARM 37.87.901, effective ~~January 1, 2023~~ May 12, 2023.

AUTH: 53-2-201, 53-6-113, MCA
IMP: 53-2-201, 53-6-101, 53-6-125, 53-6-402, MCA

4. The department has thoroughly considered the comments and testimony received. A summary of the comments received and the department's responses are as follows:

COMMENT #1: The Montana Optometric Association stated that the department's proposed fee schedules did not include sufficient information to review the proposed changes.

RESPONSE #1: In response to the comment, the department extended the comment period to February 3, 2023, by filing a notice of extension of comment period on the proposed amendment. The department was able to provide and publish updated fee schedules to its web site on January 26, 2023, allowing for public comment on the posted fee schedules.

COMMENT #2: The department received a comment stating the department fails to comply with the legislative appropriations and applicable law. The commenter cited a statute in Title 37, MCA, and asserted optometrists should be reimbursed equal to the amount paid to medical doctors and doctors of osteopathy, whose reimbursement the Montana legislature has directed to be paid pursuant to 53-6-125, MCA.

RESPONSE #2: As the commenter is aware, this assertion is the subject of a lawsuit filed in state district court and will be resolved through that process.

COMMENT #3: Several commenters presented questions or comments regarding administration of mobile crisis response services and other Medicaid-covered services. This rulemaking included fee schedules with reimbursement rates.

RESPONSE #3: This rulemaking was limited to proposed fee schedules for mobile crisis response services; thus, these comments are outside the scope of this rulemaking. The department acknowledges receipt of these questions and

comments. It has been the experience of the department that providers and partner agencies have invaluable knowledge and experience regarding the delivery of services; therefore, the department will take these recommendations under consideration for future rulemaking after consultation with the commenters and the larger provider community.

COMMENT #4: A commenter indicated that the 14-day diversion rate was reduced from $575/day to $367/day.

RESPONSE #4: The department disagrees, as the 14-day diversion rate is not included in the current rulemaking. The 14-day diversion rate was an individually contracted service prior to the inclusion of Non-Medicaid Mental Health Services described in the BHDD Non-Medicaid Services Provider Manual for Substance Use Disorder and Adult Mental Health, effective October 1, 2022. Those services now are available to providers that meet requirements without the need for a separate contract.

COMMENT #5: Multiple commenters recommended the department raise proposed mobile crisis response reimbursement rates to account for leadership and care coordinator positions, reduced productivity due to overnight trends, administrative costs, travel time, phone coverage, missed contacts, episodes where the client cannot be located, and staff support.

RESPONSE #5: As noted above, the department has withdrawn the proposed reimbursement rates for mobile crisis services. The proposed rate was established by the contractor that performed the rate study for the department. The contractor considered several factors in the development of the rates including the following: staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #6: A commenter recommended the department increase the proposed mobile crisis reimbursement rates for 12/7 coverage to match those reimbursement rates proposed for 24/7 coverage.

RESPONSE #6: As noted above, the department has withdrawn the proposed reimbursement rates for mobile crisis services. The proposed rate was established by the contractor that performed the rate study for the department. The contractor considered several factors in the development of the rates, including staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #7: A few commenters recommended the department no longer limit the utilization of mental health licensure candidates to mental health centers (MHCs) and federally qualified health centers (FQHCs) and permit these candidates to engage with clients in additional settings.

RESPONSE #7: These comments are outside the scope of this rulemaking. The department acknowledges receipt of this recommendation. The department will take these recommendations under consideration for future rulemaking.

COMMENT #8: A commenter recommended the department add per diem rates for mobile crisis response services.

RESPONSE #8: As noted above, the department has withdrawn the proposed reimbursement rates for mobile crisis services. The proposed rate was established by the contractor that performed the rate study for the department. The contractor considered several factors in the development of the rates, staff wages provided through provider surveys, staff time needed to deliver the service, productivity adjustment, administrative costs, program support costs, and staff benefits/compensation.

COMMENT #9: A commenter said youth in therapeutic group homes (TGH) greatly benefited from community-based psychiatric rehabilitation and support (CBPRS) services, which were made available to youth in that setting during the public health emergency (PHE) and were increased from 8 units per day to up to 16 units per day. The services also assisted providers treating youth in TGHs. The commenter requested the department make the expanded services permanent for youth in TGHs.

RESPONSE #9: The department agrees with this recommendation, and has updated the fee schedule language. The fee schedule has been updated to allow mental health centers to bill for CBPRS-group services for youth in TGHs, and to increase the daily limit of CBPRS-group services for such youth to 16 units per day.

COMMENT #10: In reviewing the State Plan Amendment submitted by Montana, the Centers for Medicare & Medicaid Services (CMS) recommended the effective date of the proposed changes related to children's mental health be updated to the "Day After End of PHE End."

RESPONSE #10: The department agrees with this recommendation and will update the Youth Mental Health Fee schedule effective date to May 12, 2023, which is one day after the recently announced end of the public health emergency (PHE), May 11, 2023. This will not cause a disruption in services as all proposed updates are currently in effect through the disaster recovery State Plan Amendment.

/s/ BRENDA K. ELIAS
Brenda K. Elias
Rule Reviewer

/s/ CHARLES T. BRERETON
Charles T. Brereton, Director
Department of Public Health and Human Services

Certified to the Secretary of State February 14, 2023.

BEFORE THE COMMISSIONER OF POLITICAL PRACTICES
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 44.12.204 pertaining to the payment threshold--inflation adjustment for lobbyists	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On December 9, 2022, the Commissioner of Political Practices published MAR Notice No. 44-2-263 pertaining to the proposed amendment of the above-stated rule at page 2264 of the 2022 Montana Administrative Register, Issue Number 23.

2. The commissioner has amended the above-stated rule as proposed.

3. No comments or testimony were received.

/s/ Scott Cook
Scott Cook
Rule Reviewer

/s/ Chris J Gallus
Chris J. Gallus
Commissioner of Political Practices

Certified to the Secretary of State February 14, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2022. This table includes notices in which those rules adopted during the period August 26, 2022, through February 10, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 or 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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2-59-626 Renewal Fees of Mortgage Brokers, Lenders, Servicers, and Mortgage Loan Originators, p. 944, 1690
2-59-630 Activities Requiring a License, p. 1352, 1790
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12-586 Grizzly Bear Demographic Objective for the Northern Continental Divide Ecosystem, p. 1135, 1802
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17-417 Methamphetamine Cleanup - Definitions - Decontamination Standards - Performance, Assessment, and Inspection - Performance Standards - Contractor Certification and Training Course Requirements - Reciprocity - Training Provider Certification - Certified Training Provider Responsibilities - Denial, Suspension, and Revocation of Certification - Fees - Sampling - Recordkeeping - Reports - Incorporation by Reference, p. 367, 952, 1812

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EXECUTIVE BRANCH APPOINTEES AND VACANCIES

Section 2-15-108, MCA, passed by the 1991 Legislature, directed that all appointing authorities of all appointive boards, commissions, committees, and councils of state government take positive action to attain gender balance and proportional representation of minority residents to the greatest extent possible.

One directive of 2-15-108, MCA, is that the Secretary of State publish monthly in the ***Montana Administrative Register*** a list of executive branch appointees and upcoming vacancies on those boards and councils.

In this issue, appointments effective in January 2023 appear. Potential vacancies from March 1, 2023 through March 31, 2023, are also listed.

IMPORTANT

Membership on boards and commissions changes constantly. The following lists are current as of February 1, 2023.

For the most up-to-date information of the status of membership, or for more detailed information on the qualifications and requirements to serve on a board, contact the appointing authority.

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Investments			
Mr. Porter Bennett	Governor	New	1/9/2023
Pony			1/1/2026
Qualifications (if required):	Agriculture Representative		
Mr. Tim Kober	Governor	New	1/9/2023
Butte			1/1/2026
Qualifications (if required):	Labor Representative		
Cindy Younkin	Governor	New	1/9/2023
McAllister			1/1/2026
Qualifications (if required):	Attorney		
Board of Medical Examiners			
Dr. Carley Robertson	Governor	Anna Earl	1/1/2023
Havre			9/1/2026
Qualifications (if required):	Doctor of Medicine		
Dr. Adam Smith	Governor	Molly Biehl	1/1/2023
Polson			9/1/2026
Qualifications (if required):	Osteopath Doctor of Medicine		

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Board of Medical Examiners Cont.			
Dr. Gina Painter	Governor	Reappointed	1/1/2023
Great Falls			9/1/2026
Qualifications (if required): Podiatrist			
Board of Pardons and Parole			
Mr. Brad Newman	Governor	Reappointed	1/1/2023
Butte			1/1/2029
Qualifications (if required): Experience in criminal justice system			
Board of Veterinary Medicine			
Ms. Marcia Cantrell	Governor	Barbara Calm	1/3/2023
Livingston			8/1/2028
Qualifications (if required): Licensed Veterinarian			
Fish and Wildlife Commission			
Ms. Susan Brooke	Governor	Pat Byorth	1/1/2023
Bozeman			1/1/2027
Qualifications (if required): Region 3 Representative			
Mr. Jeff Burrows	Governor	Jana Waller	1/1/2023
Hamilton			1/1/2027
Qualifications (if required): Region 2 Representative			

EXECUTIVE BRANCH APPOINTEES FOR JANUARY 2023

Appointee	Appointed By	Succeeds	Appointment/End Date
Livestock Loss Board			
Ms. Raina Blackman	Governor	Patricia Quisno	1/1/2023
Wolf Creek			1/1/2027
Qualifications (if required): Livestock Industry with experience in wildlife			
Unemployment Insurance Appeals Board			
Mr. Derek Oestreicher	Governor	Chris Gallus	1/1/2023
Helena			1/1/2025
Qualifications (if required): Attorney			

EXECUTIVE BRANCH VACANCIES – MARCH 1, 2023 THROUGH MARCH 31, 2023

Board/Current Position Holder	Appointed By	Term End
Board of Livestock		
Mr. Ed Waldner, Chester	Governor	3/1/2023
Qualifications (if required): Swine producer		
Mrs. Nina Baucus, Wolf Creek	Governor	3/1/2023
Qualifications (if required): Cattle Producer		
Ms. Susan Marie Brown, Belgrade	Governor	3/1/2023
Qualifications (if required): Dairy producer representing the dairy and poultry industry		
Potato Commodity Advisory Committee		
Mr. Dave Cottom, Dillon	Governor	3/1/2023
Qualifications (if required): Potato Producer		
Mr. William F. Buyan Jr., Sheridan	Governor	3/1/2023
Qualifications (if required): Potato Producer		
Mr. Paul Streich, Kalispell	Governor	3/1/2023
Qualifications (if required): Potato Producer		
Mr. Tim Venhuizen, Manhattan	Governor	3/1/2023
Qualifications (if required): Potato Producer		
State Compensation Insurance Fund Board		
Mr. Curt Laingen, Shepard	Governor	3/31/2023
Qualifications (if required): Private enterprise policy holder		

MONTANA ADMINISTRATIVE REGISTER

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SECRETARY OF STATE

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